United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,749

CLARENCE W. MCFARLAND

Appellant

v.

UNITED STATES OF AMERICA

Appellee

8458

Appeal from the Judgment of Conviction of the United States District Court for the District of Columbia

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STATEMENT OF QUESTION PRESENTED

Is there sufficient evidence to go to the jury, on an indictment charging appellant with robbery of a federally-insured bank, when the uncontradicted testimony shows that another person, alone, committed the actual robbery and then fled to where appellant was sitting in a parked automobile, which at once sped off, when there was no evidence of any kind that appellant planned to help rob the bank, or even knew that the bank had been robbed, and appellant's demeanor while sitting in the automobile was totally inconsistent with participation in, or knowledge of, a robbery?

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,749

CLARENCE W. MCFARLAND

Appellant

v.

UNITED STATES OF AMERICA

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Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a judgment of conviction issued by the United States District Court for the District of Columbia, finding appellant guilty of a violation of Title 18, section 2113(a), of the United States Code. The court below had jurisdiction to hear the case under the provisions of 18 U.S.C. 3231. This Court has jurisdiction to hear the appeal under 28 U.S.C. 1291. The indictment appears

at page of the record in this Court; the verdict of the jury appears at page thereof; and the judgment of the court below appears at page . A motion for leave to appeal in forma pauperis was filed on July 17, 1964 (see page of the record in this Court) and was granted by this Court on August 13, 1964 (page).

STATEMENT OF THE CASE

Appellant was convicted of a violation of 18 U.S.C. 2113(a), which relates to robbery of banks insured by the Federal Deposit Insurance Corporation.

The operative events in this case occurred on March 13, ~~1963~~. On the morning of that day, Mr. James F. Hogan, Jr. was a teller-trainee employed by the Industrial Bank of Washington, 4810 Georgia Avenue, N. W., Washington, D. C. (Tr.22-23), which was then insured by the Federal Deposit Insurance Corporation (Tr. 41-2).

At about 11:30a.m. on that morning, a man subsequently identified as John T. Crawford entered the bank, walked up to Hogan, produced a gun, and told Hogan to put money in a paper bag which the robber placed on the counter. (Tr.24-27) The robber was not masked (Tr.59). Hogan proceeded to put $5,900.00 in the bag, and during that time the robber menaced other employees of the bank, including Drapher A. Pagan, the Manager and Assistant Cashier, with the gun and made them lie down on the floor (Tr.25-6,44). This was witnessed

not only by the bank employees but also by a man named Robert F. Johnson, a warehouse manager, who had come to the bank to deposit money that morning and saw the robbery through the door as he began to enter the bank (Tr. 66-68). The robber pointed a gun at Johnson and told him to "hit the floor", but instead Johnson turned and ran away from the bank (Tr. 69).

After the money was placed in the bag, the robber (John T. Crawford) ran out of the bank with the bag of money and ran north on Georgia Avenue toward Emerson Street, which was the next street, and ran toward an automobile that was double parked on Emerson Street (Tr. 28, 30, 44). He was pursued by Drapher A. Pagan, who followed the robber up Georgia Avenue and saw him get into the parked automobile, which at once sped away (Tr. 45). In that automobile, sitting on the driver's side, was a man conceded by the counsel for appellant to be the appellant McFarland (298, 330-1). Mr. Johnson, the would-be depositor, who had turned and run from the bank, ran up an alley toward Emerson Street and also saw the parked automobile, containing a man sitting on the driver's side, and was menaced by the robber who pointed a gun at him and told him to get back (Tr. 68-74). Mr. Harold L. Reynolds, who had accompanied Johnson to the bank and, like Johnson, had run up the alley, also saw the robber get into the parked car, which contained the man sitting in the driver's seat, and saw the car drive away (Tr. 106-111).

Pagan testified that the motor of the car was running (Tr. 45), but on cross-examination he conceded that he did not mean

that he exactly knew the motor was running but only that he did not hear the motor start and the car "pulled right off, so I assumed it was running" (Tr. 57). Neither Johnson (Tr. 78) nor Reynolds (Tr. 111) was able to say whether the motor was running prior to the time the robber entered the automobile.

After the car containing McFarland and Crawford took off from Emerson Street, a police report was given, describing the robbery and the automobile in which the two men had taken off (Tr. 140-141), and some minutes later a police scout car containing officers George O. Young and Albert E. Yowell, responding to the report, was stationed at 16th and Euclid Streets, N. W. pursuant to orders (Tr. 141). Officers Young and Yowell saw an automobile, answering the description given in the report and containing two persons, proceeding south on 16th Street in the 2400 block (Tr. 142). The car was going at normal speed (Tr. 143, 160, 161). The police officers began to follow the automobile, which continued down 16th Street for a while at normal speed, then made a right-hand turn in the 1600 block, went west on Crescent Place, turned left on 17th Street, left again back to 16th Street, increasing its speed to a "very high rate" when it returned to 16th Street (Tr. 143). At this point the police officers turned on their red light and siren (Tr. 143-4). The man sitting in the passenger seat of the first automobile turned around and looked back (Tr. 144 - 5).

The first automobile, followed by the police car, then began to run through red lights, at a high rate of speed, went along

Florida Avenue to Connecticut Avenue, turned left (south) on Connecticut Avenue, and crashed into a taxicab which was waiting at R Street for the traffic light to change (Tr. 145-6). The two men in the automobile jumped out of the car, scattering money, ran west on R Street, followed by police officers (Tr. 147). Appellant McFarland was arrested in the basement of a house on 21st Street, near R Street, and Crawford was arrested in the rear of the house (Tr. 151-153). The money recovered from the scene of the accident was identified as the $5,900.00 stolen from the bank (Tr. 48-9; 183-4; 251).

Crawford and appellant McFarland were indicted on three counts: (1) violation of 18 U.S.C. 2113(a) for "entering" a bank insured by the Federal Deposit Insurance Corporation with intent to commit robbery therein; (2) another violation of 18 U.S.C. 2113(a) for robbing Hogan, by force and violence, of money belonging to a bank insured by the Federal Deposit Insurance Corporation; and (3) violation of D. C. Code 22-2901, the District of Columbia robbery statute. On October 31, 1963, Crawford pleaded guilty to Count 3, the District of Columbia robbery count, and on December 16, 1963, he was adjudged guilty and given a sentence of 4 to 12 years. Appellant went to trial on April 16, 1964.

At the conclusion of the prosecution's case, the trial judge - on appellant's motion and the prosecution's assent - granted judgment of acquittal on Count 1 ("entering" a federally insured bank with intent to rob) and Count 3 (the District of Columbia robbery statute), leaving only

Count 2, robbery of a federally-insured bank (Tr. 277-284; 295). Appellant's trial counsel then made a timely motion for acquittal on the remaining count on the ground of insufficiency of the evidence, saying that reasonable jurors must necessarily have a reasonable doubt as to appellant's guilt on Count 2 (Tr. 285-288). Counsel argued that there was no evidence that McFarland was a participant in the robbery of the bank, and that the most the evidence could reasonably show was that McFarland was an accessory after the fact (Tr. 288-9, 291-3), which would be a violation of a different statute, 18 U.S.C. 3. Appellant's motion was denied (Tr. 295).

Appellant did not take the stand at his trial. His only witness was an employee of the Department of Motor Vehicles of the District of Columbia, who testified that appellant's automobile operator's permit was turned in on February 18, 1963, and not restored and that appellant was therefore not a licensed operator on March 13, 1963, the day of the robbery (Tr. 296, 302-3).

On April 21, 1963, the jury returned a verdict of "guilty as charged" on Count 2 (Tr. 364). On June 12, 1964, a judgment of guilty with a sentence of 3 to 9 years imprisonment was entered. Notice of appeal was filed that same day.

STATUTE INVOLVED

18 U.S.C. 2113

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any pro-

perty or money or any other thing of value belonging to or in the care, custody, control, management, or possession of, any bank... Shall be fined not more than $5,000. or imprisoned not more than twenty years, or both.

. . .

(f) As used in this section the term "bank" means...any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

STATEMENT OF POINTS

With respect to the point presented below, appellant desires the court to read the following pages of the reporter's transcript: Tr. 22-31, 39-40, 43-45, 50-57, 60-1, 68-71, 78, 82-84, 86-89, 90, 110-111, 117-118.

There was insufficient evidence to go to the jury, and a judgment of acquittal should have been granted at the close of the prosecution's case. There was no direct evidence of any kind to show that appellant planned to participate in the robbery or had any knowledge that Crawford planned to commit or did commit the robbery, and the jury may not reasonably or permissibly so infer from the evidence adduced. At most, appellant could have been an accessory after the fact.

SUMMARY OF ARGUMENT

Appellant was convicted of robbery, although the Government's own evidence showed no more than that he drove with Crawford to Emerson Street, the block above the bank, and that

Crawford subsequently robbed the bank. It is beyond dispute that appellant did not enter the bank, participate in taking the money, or take any other direct part in the robbery. It is not disputed that appellant was merely sitting in the automobile on Emerson Street while Crawford was committing the robbery. The trial produced no evidence to show, or from which the jury could properly infer, that appellant knew that Crawford planned to rob the bank, or even that appellant knew that Crawford, when he entered the car on Emerson Street, had robbed the bank. Appellant's demeanor and actions, as Crawford and the others came running toward the car following the robbery, showed no indication of guilt or knowledge of guilt, and were in fact inconsistent with knowledge or guilt of a crime.

Appellant's "suspicious" actions following the robbery - such as speeding up, when police pursuit was noticed, or flight on foot after the accident - are consistent with another and totally different explanation, which is that appellant was driving without an operator's permit and was concerned about being picked up for that offense. He was not on trial for that offense, however; he was on trial for robbery.

It is possible that, assuming appellant knew nothing of Crawford's plan to rob the bank, appellant might have realized that Crawford had robbed the bank, and he then helped Crawford to attempt to escape. This might constitute the offense of being an accessory after the fact, which was included in the trial judge's

instructions to the jury. But appellant was not convicted of being an accessory after the fact; he was convicted of robbery of the bank.

ARGUMENT

There was not sufficient evidence on which a jury could properly find appellant guilty of the crime of robbery.

This case presents to this Court the issue of the sufficiency of the evidence to go to the jury. Appellant was convicted of a violation of 18 U.S.C. 2113(a), set forth supra - that is, of taking from the person or presence of Hogan, the teller-trainee, by force and violence or by intimidation, money belonging to the Industrial Bank of Washington. Now there is no doubt that John T. Crawford did so. Crawford, who was indicted together with appellant, pleaded guilty and was therefore not involved in the trial below. The question before this Court is whether the evidence was sufficient to send to the jury the question whether appellant also robbed the bank. If appellant planned to rob the bank together with Crawford, his part being to drive the automobile while Crawford did the actual robbing, of course appellant would be guilty as a principal, and the judgment below would be proper. But if appellant did not so plan, and if he had no knowledge that Crawford intended to rob the bank, and if he drove with Crawford for a proper and legal purpose, and parked in Emerson Street for a proper and legal purpose, then he could not be guilty of robbing the bank, even though he may, at the time Crawford came running toward the car with the bag, then have realized that Crawford did rob the bank.

Appellant might (theoretically) then have become an accessory after the fact, and indeed the trial judge instructed as to accessory after the fact (Tr. 359), but he did so not as to the sufficiency of the evidence but as to whether the robbery had been completed at the time Crawford entered the automobile. However, the "accessory" issue vanished from the case, because the jury found appellant "guilty as charged" (Tr. 364) - that is, guilty of the robbery, and not of being an accessory after the fact.

It will be conceded by the Government that there is no direct evidence that appellant planned with Crawford to rob the bank, or that he knew that Crawford intended to rob the bank. We start with that proposition. It follows that the conviction below must rest on inference. Inference, as we shall show, may be proper or it may be improper. Let us examine the evidence on which the Government relies.

Admittedly, only one man entered the bank, brandished a gun, took the money from Hogan, and ran out of the bank. (Tr. 22-31, 39-40, 43-44, 68-69). Admittedly, that man was John T. Crawford. Crawford ran up Georgia Avenue to Emerson Street, turned into Emerson Street, and entered an automobile double-parked in Emerson Street. It was conceded at the trial that appellant was sitting in the driver's seat of that automobile (Tr. 298, 330-1). This with one exception (the testimony of Eunice Wells, to be discussed later), is virtually the totality of the evidence on which the conviction rests. But this evidence says nothing about

appellant's state of mind or his knowledge of Crawford's actions. It would seem that if appellant had planned the robbery together with Crawford, he would have been waiting anxiously; he would have been staring out of the car; he would have shown signs of being an active and an anxious participant. This is where the Government's case breaks down. Of the three witnesses - Drapher A. Pagan, Robert F. Johnson, and Harold L. Reynolds - who saw Crawford run up to the car and get in, not one testified that the driver showed any such signs as we have described.[1/]

Pagan apparently noticed nothing unusual about the driver or the driver's attitude or posture, for he said nothing about it. Johnson, however, testified that the driver was doing nothing, "other than just sitting there" (Tr. 86). So far as Johnson could see or hear, the driver did not say anything to Crawford as Crawford entered the car (Tr. 86-7). Significantly, Johnson said that he "had no reason to associate [the driver] in any way with what was going on in the bank" (Tr. 89). "...so far as associating, I didn't have any idea" (Tr. 89).

Mr. Reynolds testified to the same effect. When asked what the driver of the car was doing, as Crawford was running

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1/ Mr. Pagan testified on direct examination that the car's motor was running (Tr. 45). but on cross-examination he admitted that he did not mean that he actually heard the motor running; he meant only that he did not hear the motor start and the car "pulled right off, so I assumed it was running" (Tr. 57). Neither Johnson (Tr. 78) nor Reynolds (Tr. 111) was able to say whether the motor was running.

toward the car, and Johnson and Reynolds were running up the alley, Reynolds replied: "Just sitting there" (Tr. 117). Subsequently the following colloquy ensued (Tr. 118):

> "Q Was he doing anything?
> A No
> Q Did he look back, sir?
> A No
> Q Well then, would you say he was taking notice of the things that were happening at that time?
> A I couldn't say.
> Q But you didn't see him do anything that might have led you to believe that he was taking notice or participating in what was taking place?
> A No. Not right out. Taking off, yes".

What emerges from this testimony is hardly the picture the Government would have us believe, of a man participating in a daring bank robbery, waiting anxiously in the "getaway" car for his partner in crime to come running up. Instead, what emerges is a picture of a man calmly minding his own business, business which appears to be legal and proper. How can a jury legally and properly conclude from this testimony that appellant was a participant in the robbery?

The testimony of the police officers who followed the automobile, after the robbery, down 16th Street and across town into Connecticut Avenue, is relevant here. It must be remembered that a robbery had been committed only minutes earlier; the robber - wearing no mask - had been seen by many persons; and the automobile had been seen by Pagan, Johnson and Reynolds. A police report identifying the car and the man was clearly to be expected. Yet police officer Young, one of the two men in the

scout car, testified repeatedly (Tr. 143, 160, 161) that the car being driven by appellant was going at a "normal" speed. The car came down 16th Street at a "normal" speed and even went west on Crescent Place, off 16th Street, at a "normal" speed (Tr. 143, 161), and it was not until the passenger turned around and looked at the police car that the automobile began to speed up (Tr. 162). This again supports the theory that appellant, supposedly a participant in a robbery and supposedly driving a "getaway" car, was in fact innocent of any such actions and was proceeding peacefully through town (until the police gave chase, which we shall explain later).

The Government will no doubt cite, in its support, the testimony of Eunice Wells, an employee in appellant's grocery store on the date of the robbery (Tr. 270), that before 10:00a.m. on that morning Crawford came to the store in the car involved in the robbery, bought a pack of cigarettes, and left the store alone (Tr. 271-2). She said that Crawford got into the car; then McFarland got into the same car; and the two men left together in that car, shortly before or after 10:00a.m. (Tr. 273). They did not come back (Tr. 273). This store was located at 3215 23rd Street, S. E. (Tr. 256). The robbery took place, as has been noted, at about 11:20a.m. at 4810 Georgia Avenue, N. W. (Tr. 22, 23).

All this may be the evidence, but it does not prove the Government's case. It simply proves that appellant left with Crawford and drove a considerable distance across town,

but it does not prove appellant's knowledge of and participation in the robbery. He may have gone with Crawford for some other purpose, legal and proper. Nor does the speeding up, nor the flight on foot down Connecticut Avenue, prove guilty participation or knowledge by appellant; these are at once explained by the fact (Tr. 296-7, 302-3) that appellant had turned in his permit and was not, on the date of the robbery, a licensed operator. Appellant may have been attempting to evade arrest for driving without a license, but that is not involved in this case; we are concerned here with his conviction for robbery.

The Government's case requires a leap of inference. May inference properly bridge the gap?

As is shown in Galloway v. United States, 319 U.S. 372 (1943), there are chasms that inference may not properly leap. An excellent example, recently decided by this Court, is Hunt v. United States, 316 F. 2d 652, - App. D. C. - (1963), reversing a conviction of robbery under D. C. Code 22-2901, because (as here) the evidence was purely circumstantial, required too great a leap by inference, and was insufficient to go to the jury. The Hunt case has many features similar to the case at bar and ought to control here. That was the case in which a lady, after being subjected to the apparently normal jostling at a bus stop, noticed after boarding the bus that her wallet was missing. Looking back through the bus window, she saw Hunt and one Kitt shaking hands. She got off the bus and, escorted by two police-

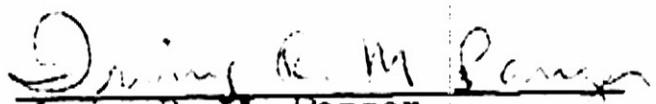
men, approached Hunt and Kitt, who immediately began to run. Kitt was soon arrested, throwing down the lady's wallet within a few feet from the place of arrest, and Hunt was also caught. Hunt admitted knowing Kitt and fleeing with him on sighting the police, but he denied participating in the robbery. He explained his shaking hands with Kitt as merely an indication that he and Kitt were acquainted, and he explained his flight from the police as an act of "terrorized innocence" in that he had just been released from jail and on impulse fled when Kitt fled. This Court held the evidence insufficient to go to the jury on a charge of robbery, though a lesser crime might have been indicated.

Another instructive case is Cooper v. United States, 218 F. 2d 39, 94 U.S. App. D. C. 343 (1954). This was another robbery case bearing many resemblances to the instant case. A robbery took place, by two men; four men fled from the scene in an automobile which was being purchased by Cooper, and his fingerprint was found on the steering wheel. Cooper was shown to have gone to a cousin, telling her he was in trouble, and asking her to say he was with her in North Carolina on the day of the robbery, which was untrue. Cooper was a friend of one of the robbers. But no one identified Cooper as one of the robbers; no one placed him at the scene of the robbery. This Court held the evidence insufficient to sustain a conviction, saying (as we say here) that "upon the evidence in the case at bar a reasonable mind must necessarily have had a reasonable doubt as to

[defendant's] guilt". 218 F. 2d at 41. The Court said (218 F. 2d at 42):

> "Guilt, according to a basic principle in our jurisprudence, must be established beyond a reasonable doubt. And, unless that result is possible on the evidence, the judge must not let the jury act; he must not let it act on what would necessarily be only surmise and conjecture, without evidence".

We think that language is applicable to the case at bar and, accordingly, the refusal of the trial court to grant the appellant's motion for acquittal, made at the conclusion of the Government's case (Tr. 285, 295), was error and requires reversal of this case with instructions to enter a judgment for acquittal



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BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,749

CLARENCE W. MCFARLAND, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

DAVID C. ACHESON,
United States Attorney.

WILLIAM H. COLLINS, JR.,
FRANK Q. NEBEKER,
Assistant United States Attorneys.

Cr. No. 348-63

QUESTION PRESENTED

Was there sufficient evidence to support appellant McFarland's conviction of robbery under 18 U.S.C. Section 2113(a) as an aider and abettor, when the evidence shows that one Crawford and appellant McFarland were friends or acquaintances, that on the morning of the robbery Crawford and McFarland were seen driving away from McFarland's place of business together, that Crawford entered the Bank and took money at gun point, that McFarland was waiting for Crawford in a car with the motor running, that after they drove off together they were chased by a police car, had an accident, fled together on foot and finally were arrested in the same house?

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,749

CLARENCE W. MCFARLAND, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant McFarland was indicted, tried by jury, convicted and sentenced to imprisonment for a period of three to nine years on one count of taking, by force and violence, money belonging to a bank insured by the Federal Deposit Insurance Corporation in violation of 18 U.S.C. 2113(a).[1] This appeal followed.

[1] Two additional counts, one under the second paragraph of 18 U.S.C. 2113(a) and one under 22 D.C. 2901, were dismissed when the trial court required the Government to elect on which of the three counts it would proceed (Tr. 285).

The robbery in question occurred on March 13, 1963, at the Industrial Bank of Washington, 4810 Georgia Avenue, N.W. (Tr. 22-24). The deposits of the Industrial Bank are insured by the Federal Deposit Insurance Corporation (Tr. 42). John T. Crawford was indicted and pleaded guilty to having robbed this bank, and on December 16, 1963, was sentenced to serve from four to twelve years.

McFarland is the owner of a grocery store at 3215 Twenty-third Street, S.E. Willie Bennett, an employee in the store, testified that Crawford was a regular visitor to the store and seemed for a while to be working there (Tr. 269). Joseph A. Gross, an attendant at a neighboring service station testified that he had seen McFarland and Crawford together on a couple of occasions prior to the day of the robbery (Tr. 208). Eunice Wells, another employee of the store, testified that on the day of the robbery Crawford came into the store shortly before 10:00 a.m. and purchased a pack of cigarettes. McFarland was present at the time. They did not engage in conversation. Crawford left the store, followed a short time later by McFarland. They drove away together in a black 1954 Chrysler (Tr. 270-73).

James F. Hogan, a teller at the Industrial Bank, testified that at approximately 11:20 a.m. (Tr. 23). Crawford entered the temporary trailer being used for banking facilities by the Industrial Bank, threatened him with a revolver, and ordered him to put money in a paper bag which Crawford put on the counter. Hogan complied and put $5,900 in the bag while Crawford menaced the other employees of the Bank with his gun and made them lie on the floor. Crawford took the bag of money, left the Bank by the Georgia Avenue exit, and ran towards Emerson Street (Tr. 23-26).

Robert F. Johnson, a customer of the Bank, had started to enter the Bank that morning to make a deposit when he saw men lying on the floor and the tellers looking "horrified." He saw Crawford, who threatened him with a

revolver and ordered him "to hit the floor." Johnson ran out the door to the Bank's parking lot, called to his co-worker Harold L. Reynolds who was waiting for him, and the two men ran up an alley towards Emerson Street (Tr. 67-70). When he arrived near the end of the alley which opened on Emerson Street, Johnson saw a black Chrysler completely blocking the exit from the alley "possibly in the middle" of Emerson Street (Tr. 70, 74). The man he had just seen in the Bank appeared near the car, pulled out a gun, and warned him to "get back" (Tr. 71). Johnson described the man in the driver's seat of the car as having a "short neck" (Tr. 84) and being "similar in appearance" to McFarland (Tr. 71). Reynolds, who was with Johnson, corroborated his testimony that they were threatened and told to get back in the alley. Reynolds further testified that the man with the gun got in on the passenger side and "almost fell out when the car took off" (Tr. 109, 111). Reynolds described the man in the driver's seat as "dark," "short and heavy" but could not identify him as McFarland (Tr. 110).

Crawford's departure was also witnessed by Drapher A. Pagan, an assistant manager and cashier of the Bank, who testified that he followed Crawford from the Bank. When he reached the corner of Emerson Street and Georgia Avenue he saw Crawford get into a black car parked close to the alley which immediately drove away. Pagan believed the motor of the car had been running because he did not hear the motor start although he was a little more than 25 feet away and because the car "pulled right off" (Tr. 44, 57-59). Pagan testified that he could not identify the driver although he saw someone waiting in the car (Tr. 60).

After McFarland and Crawford had driven off, Pagan reported the robbery to the police and described the car (Tr. 46). Minutes later Officers George O. Young and Albert E. Yowell in a police patrol car at 16th and Euclid Streets, saw an older model black Chrysler with two occupants proceeding south on 16th Street in the 2400

block (Tr. 142). The car was traveling at normal speed (Tr. 143, 160-61). The police officers began to follow the car, which continued down the 16th Street at normal speed, then made a right-hand turn at the 1600 block and went west on Crescent Place (Tr. 144). At this point the man sitting in the passenger seat turned around and looked back (Tr. 143-45). The car then turned left on 17th Street, left again on 16th Street, increasing its speed to a very high rate when it returned to 16th Street. The police car then turned on its flashing red light and siren (Tr. 143-44).

The car then drove south on 16th Street at a high rate of speed, passing red lights, and then on Florida Avenue, until it reached Connecticut Avenue, where it turned south and crashed into a taxicab which was waiting at R Street for a traffic light (Tr. 145-46).

Officers Yowell and McFarlin testified that McFarland jumped from the driver's side of the car and Crawford from the passenger's side (Tr. 179, 183, 225, 230-31, 239, 243). Both men ran south on Connecticut Avenue (Tr. 157, 214) and then between two buildings on R Street. Officer McFarlin ran between the buildings and saw them climbing over a wooden fence together (Tr. 227-29). McFarland was arrested in the basement of a house on 21st Street and Crawford was arrested in the rear of the same house (Tr. 151-53). The money recovered from the scene of the accident was identified as the $5,900 stolen from the Bank (Tr. 48-49).

McFarland did not take the stand at his trial.[2] His only witness was an employee of the Department of Motor Vehicles of the District of Columbia who testified that the appellant's automobile permit was turned in on February 18, 1963, and not restored and that appellant was therefore not a licensed operator on March 13, 1963, the day of the robbery (Tr. 296, 302-03).

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[2] Counsel for McFarland admitted in his closing argument that McFarland drove the car in which the escape was made (Tr. 330-31).

STATUTES INVOLVED

Title 18, United States Code, Section 2113 provides in pertinent part:

> (a) Whoever, by force and violence, or by intimidation, takes or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, or any savings and loan association; or
>
> Whoever enters or attempts to enter any bank, or any savings and loan association, or any building used in whole or in part as a bank, or as a savings and loan association, with intent to commit in such bank, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank or savings and loan association and in violation of any statute of the United States, or any larceny—
>
> Shall be fined not more than $5,000 or imprisoned not more than 20 years, or both.
>
> (f) As used in this section the term "bank" means . . . any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

Title 18, United States Code, Section 2 provides:

> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is a principal.
>
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Title 22, District of Columbia Code, Section 105 provides:

> In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories be-

fore the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be.

SUMMARY OF ARGUMENT

There was sufficient evidence to support appellant McFarland's conviction on the theory that he aided and abetted Crawford in the commission of the robbery, since the evidence viewed in a manner most favorable to the Government, including reasonable inferences from the proven circumstances, might well have led reasonable minds to believe beyond a reasonable doubt that McFarland actively associated himself with Crawford prior to the robbery as a lookout and preparer of the getaway car and actively participated in the robbery by driving the getaway car in light of his driving with Crawford in the car shortly before the robbery, his presence at the helm of the car in the middle of the street with the motor running when Crawford emerged the Bank, his swift resort to the accelerator before Crawford was fully inside, and his haste to flee from the police.

ARGUMENT

The evidence of appellant's participation in the robbery was sufficient

(Tr. 11, 44-45, 57-59, 67, 71, 74, 84, 106, 109, 111, 143-146, 151-153, 208, 227-229, 269-273, 296-303)

If the evidence is viewed in the manner most favorable to the Government, as it must be on appeal, *Curley* v. *United States*, 81 U.S. App. D.C. 389, 160 F.2d 229, *cert. denied*, 331 U.S. 837 (1947); *Morton* v. *United States*, 79 U.S. App. D.C. 329, 331, 147 F.2d 28, 30, *cert. denied*, 324 U.S. 875 (1945), the Government made out a prima facie case of appellant's guilt of robbery as an aider and abettor of Crawford in perpetrating the crime.

That is was more reasonable for the jury to believe that appellant associated himself with Crawford in this rob-

bery and sought by his actions to make it succeed, see standard definition of aiding and abetting set forth in *United States* v. *Peoni*, 100 F.2d 401, 402 (2d Cir. 1938) (L. Hand, J.), adopted by the Supreme Court in *Nye and Nissen* v. *United States*, 336 U.S. 613, 619 (1949), than for the jury to think that appellant's presence in the driver's seat of getaway car both before and immediately after Crawford emerged from the Bank was innocent is clear from the record.

Although appellant was not seen in the Bank proper, he was placed in the car with Crawford shortly before the robbery (Tr. 270-273) and, when Crawford ran out of the bank towards Emerson Street, there was appellant conveniently awaiting him in the same black Chrysler, parked in the middle of the street with the motor running (Tr. 44-45, 71, 74, 84). There was no innocent reason to block traffic by parking in the street when the Bank had a parking lot available for those who wished to transact legitimate business (Tr. 67, 106). That the motor was primed and ready reasonably appears from the fact that Pagan who was slightly more than twenty-five feet away never heard the engine start up or turn over (Tr. 44, 57-59), while both Pagan and Reynolds testified that the car pulled off very quickly (Tr. 11, 57-59). Indeed, appellant was so anxious to speed off with his friend and acquaintance Crawford (Tr. 208, 269) who, he no doubt assumed, had just returned from a brief trip to the supermarket or some similarly innocent activity, that Crawford almost fell of the passenger's side (Tr. 109, 111).

Further demonstrating his concern not to assure the success of the robbery, because he had no idea of what his friend had been up to, appellant proceeded to drive at a very high rate of speed away from a pursuing police car, a chase which culminated in a crash and appellant and Crawford's joint flight and joint capture in the rear of the same house (Tr. 143-146, 151-153, 227-229).[3]

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[3] As a matter of law the jury was not required to reject the clear inferences leading to guilt merely because appellant offered a

The evidence recited above is not as consistent with appellant's innocent presence in the car as it is with his active participation in the holdup as something he wished and actively worked to bring about by facilitating the getaway. Compare *(Paul) Vaughn* v. *United States*, No. 19,003, decided May 20, 1965 (appellant not shown to be in automobile at the time it apparently was awaiting the active robbers or in the car at all until about an hour after the robbery in another part of the city). Within the framework of the proven circumstances and the favorable, but nonetheless logical inferences therefrom, reasonable minds might well believe in appellant's guilt beyond a reasonable doubt, might exclude every hypothesis save that of his guilt, as apparently the jury did. See *Wigfall* v. *United States*, 97 U.S. App. D.C. 252, 230 F.2d 220 (1956).

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

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weak explanation of his flight without personal claim before the jury—flight because caught driving without a license (Tr. 296-303).

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